EI-3338

December 11, 2007

Sandy Wesch-Schulze
Carter & Burgess, Inc.
7950 Elmbrook Drive
Dallas, Texas 75247

RE: Proposed construction of a 32-mile new rail line from near Dayton to near Cleveland, Texas Liberty County. Finance Docket No. 35061.

Dear Ms. Wesch-Schulze:

The Texas Parks and Wildlife Department (TPWD) has received your request for information regarding potential impacts to threatened and endangered species and for information on other issues of concern relating to the project referenced above. Under section 12.0011 of the Texas Parks and Wildlife Code, TPWD is charged with "providing recommendations that will protect fish and wildlife resources to local, state, and federal agencies that approve, permit, license, or construct developmental projects" and "providing information on fish and wildlife resources to any local, state, and federal agencies or private organizations that make decisions affecting those resources."

Liberty County Rural Rail Transportation District No. 1 proposes to construct a new 32-mile rail line from near Dayton to near Cleveland, Texas in Liberty County. The proposed project would cross two existing Union Pacific rail lines, several public roads, and have several stream crossings.

Project Information

Although the proposed project description does include three proposed alignments, details regarding impacts of the proposed project on fish and wildlife resources were not provided. Therefore, due to the lack of information regarding the fish and wildlife impacts of the proposed project, it is not possible to adequately assess the potential impacts of this project upon fish and wildlife resources.

Recommendations: In general, an inventory of existing natural resources should be made of the project area. Specific evaluations should be designed to predict project impacts upon these natural resources. Sufficient documentation should be supplied to accurately interpret the

value of the natural resources involved and the extent to which the project will impact these resources.

- This can often be accomplished best with aerial and ground photography, terrain maps, charts and tables, and narrative descriptions of these data.

More detailed information outlining the requirements and expectations of this Department concerning environmental assessments are attached in a document entitled, ***"Texas Parks and Wildlife Suggested Guidelines for Preparation of Environmental Assessment Documents."***

Vegetation Impacts

The project description does not include a summary of potentially impacted vegetation.

Recommendations: TPWD recommends that clearing of mature, native trees along the route be avoided. Loss of vegetation should be minimized by using site planning and construction techniques designed to avoid and preserve existing trees, shrubs, grasses, and forbs. *For impacts that are unavoidable, TPWD recommends transplanting the existing trees or replacing them at a ratio of 3 saplings for every tree lost.* Whether transplanted or replaced, a survival of 85% should be achieved. TPWD recommends that native plant and forage species that are beneficial to wildlife endemic to the area be used in mitigation and landscaped areas.

Riparian Impacts

According to the environmental document several stream crossings will occur with the proposed rail line.

Recommendations: Although specific information regarding vegetation within each drainage area was not included in the environmental document, aerial photography indicates that stream crossings have well defined zones of riparian vegetation. Because the root systems of riparian vegetation help stabilize soils and minimize erosion, TPWD recommends that if riparian vegetation, including mature trees and shrubs, must be removed, the root systems should be left to stabilize the sediment thus reducing erosion potential.

Woody riparian vegetation usually reflects high value wildlife habitat by providing sources of food, cover, nesting and roosting. Ecologically, it stabilizes stream banks, provides shaded microenvironments, and improves water quality by slowing flood waters, filtering pollutants and retaining sediment. The degree of adverse impacts to wildlife habitat resulting from direct loss of riparian vegetation relates directly to the quantity of vegetation lost, the quality of the vegetation assemblage in fulfilling the life requisites of the organisms using it, and the proposed mitigative measures to compensate for those impacts.

Riparian corridors improve water quality and quantity and provide important nutrients to the streams and rivers. Riparian vegetation also holds water by slowing the rate at which water moves from the land into streams and shaded waterways lose much less water to evaporation. These areas also intercept surface runoff, wastewater, subsurface flow and deeper groundwater flows from upland sources for the purpose of removing or buffering the effects of associated nutrients, sediment, organic matter, pesticides or other pollutants prior to entry into surface waters and groundwater recharge areas. They are extremely complex ecosystems that help provide optimum food and habitat for stream communities as well as being useful in mitigating or controlling nonpoint source pollution and can offer recreational opportunities.

Therefore, TPWD **strongly** recommends that all impacts to forested/ riparian areas be mitigated.

Rare Resources

According to the Texas Natural Diversity Database (TXNDD) no known occurrences of threatened or endangered species have been recorded near (within 1.5 miles) of the proposed project.

The TXNDD is intended to assist users in avoiding harm to rare species or significant ecological features. Absence of information in an area does not imply that a species is absent from that area. Given the small proportion of public versus private land in Texas, the TXNDD does not include a representative inventory of rare resources in the state. Although it is based on the best data available to TPWD regarding rare species, *the data from the TXNDD do not provide a definitive statement as to the presence, absence or condition of special species,*

natural communities, or other significant features within your project area. These data are not inclusive and **cannot be used as presence/absence data.** They represent species that could potentially be in your project area. This information cannot be substituted for on-the-ground surveys. The TXNDD is updated continuously; as your project progresses and for future projects, please contact Dorinda Scott at (512) 912-7023 or Dorinda.scott@tpwd.state.tx.us for the most current and accurate information.

Determining the actual presence of a species in a given area depends on many variables including daily and seasonal activity cycles, environmental activity cues, preferred habitat, transiency and population density (both wildlife and human). The absence of a species can be demonstrated only with great difficulty and then only with repeated negative observations, taking into account all the variable factors contributing to the lack of detectable presence. If encountered during construction, measures should be taken to avoid impacting wildlife.

Recommendation: Please review the most current TPWD county lists for Liberty County, as other rare species could be present depending upon habitat availability. These lists are now available on-line at http://www.tpwd.state.tx.us/landwater/land/maps/gis/ris/endangered_species.phtml. If during construction, the project area is found to contain rare species, natural plant communities, or special features, TPWD recommends that precautions be taken to avoid impacts to them. The FWS should be contacted for additional species occurrence data, guidance, permitting, survey protocols, and mitigation for federally listed species. For the FWS rare species lists please visit http://www.fws.gov/southwest/es/EndangeredSpecies/lists/.

Migratory Birds

America's bird population has declined by over half since the 1960's. Many of these migratory species rely on riparian corridors as feeding, breeding and nesting areas. The Migratory Bird Treaty Act (MBTA) provides for a year round closed season for non-game birds and prohibits the taking of migratory bird nests and eggs, except as permitted by the FWS.

Recommendations: In order to protect migratory birds construction activities should occur outside the March – August migratory bird nesting season of each year the project is authorized and lasting for the life of the project. Construction activities include (but are not limited to) removal of

nests or nest structures, tree felling as well as vegetation clearing, trampling, or maintenance.

Please contact the FWS Southwest Regional Office (Region 2) at (505) 248-6879 for further information.

Revegetation

Recommendations: TPWD recommends that Liberty County Rural Rail Transportation District No. 1 reseed disturbed soils with a mixture of grasses and forbs native to Liberty County. To enhance native grasses available to wildlife in the project area, TPWD recommends that Bermuda grass be avoided to the extent possible in reseeding efforts, though TPWD understands that slopes may require certain grasses to control erosion.

For assistance in determining the best native seed mix for the project area, please contact our staff. Runoff control measures should be maintained until native plants have been reestablished on disturbed areas.

TPWD strives to respond to requests for project review within the 45 day comment period. Responses may be delayed due to workload and lack of staff. Failure to meet the 45 day review timeframe does not constitute a concurrence from TPWD that the proposed project will not adversely impact fish and wildlife resources.

TPWD advises review and implementation of these recommendations. If you have any questions, please contact me at (361) 576-0022.

Sincerely,

Amy Hanna

Amy Hanna
Wildlife Habitat Assessment Program
Wildlife Division

/ajh:12787

Attachment

Texas Parks and Wildlife Department Suggested Guidelines for Preparation of Environmental Assessment Documents

Following is an outline of categories of information needed to evaluate a proposed project or action. Every effort should be made to supply quantified data. If subjective data is all that can be supplied, documentation verifying the credentials of the data collector should be provided.

An asterisk notes categories considered essential for adequate biological review by this agency (*). Depending on the complexity and scope of the proposed project or action, or requirements by other agencies, all the items listed below may be required.

Whenever practical, environmental documents should be supported by aerial photography, topographic maps, schematics, charts, tables, etc. with minimum narrative sufficient to describe, quantify, and qualify the data.

A. Project Description

* • Identify who is proposing the project.

* • Identify who is conducting the assessments and provide credentials of this person(s).

* • Describe the purpose of the project.

* • Define the scope of work.

* • Identify the project area and study area (total acres, miles of ROW)

* • Identify the timetable projected for the entire project

* • Describe any required coordination and review for the project.

* • List or describe any required public input.

• Provide historical information significant to the project.

B. Description of the Affected Environment

1. Natural Resources

• Describe the geology within the study area.

* • Describe the soils present and their characteristics.

* • Describe the landform (topography) and the natural processes impacting the present landform.

• Describe the climatic factors affecting the study area.

* • Describe the supply and quality of surface water resources in the study area.

* • Describe the supply and quality of groundwater resources including aquifer recharge zones occurring within the study area.

* • Describe natural hazards affecting the study area, i.e. tidal influences, flood activity, etc.).

• Describe the quality of the air in the study area.

* • Describe the vegetation communities (cover type) specifically impacted by the project to include: dominant plant species, estimated

height of trees, woody shrubs or brush; and estimated canopy coverage of woody vegetation. Total acreage of each cover type disturbed by the project should also be listed.

* • Describe the fauna that would be associated with the dominant vegetation cover types identified above.

* • Identify "sensitive" ecosystems which occur in the study area such as: springs, streams, rivers, floodplains, vegetation corridors, bottomland hardwoods, wetlands, bays, estuaries, native grasslands, etc.

* • Describe the occurrence of threatened/endangered species (or their habitats) and unique or rare natural communities which occur in the study area.

a. On site inspection of the study area for permanent or seasonal occurrence.

b. On site inspection of the study area for occurrence of habitat.

c. Interviews with recognized experts on all species with a potential of occurrence.

d. Literature review of data applicable to a potential occurring species concerning species distribution, habitat needs, and biological requirements.

2. Cultural Resources

* • Identify public use and open space areas in the vicinity of the proposed project such as parks, natural areas, wildlife preserves and management areas.

• Identify previous, present, and proposed land uses within the study area.

• Identify significant archeological features within the study area.

• Identify significant historical features in the study area with special consideration of "National Register of Historic Places" properties.

• Identify rights-of-ways, easements, public utilities, and transportation features within the study area.

• Identify noise pollution sources and current noise levels within the study area.

• Identify existing and proposed public health and hazardous waste facilities that exist in the study area such as land fills, hazardous waste sites, wastewater treatment facilities, septic tanks, etc.

• Identify socioeconomic factors, if applicable.

*C. Project Alternatives

List and describe project alternatives (including "no action") and associated impacts (direct and indirect) to described resources. If the project is potentially large in scope, cumulative effects with other similar projects may be required.

*D. Mitigation

A major responsibility of TPWD is to conserve and protect the state's fish, wildlife, and plant resources. Certain categories of these biotic resources warrant special consideration. These include habitats that are locally and regionally scarce, habitats supporting unique species or communities, stream and river ecosystems, bays, estuaries, wetlands, bottomland hardwoods, and native grasslands. All projects that could adversely affect these resources should be fully evaluated, and where possible, implementation of less damaging alternatives undertaken. If it is determined that a project or action will potentially affect fish, wildlife or plant resources, a process for adverse impact reduction should be initiated. Mitigation measures should be developed and implemented sequentially as follows:

1. AVOIDANCE: Avoiding adverse impacts through changes in project location, design, operation, or maintenance procedures, or through selection of other less damaging alternatives to the project or action.

2. MINIMIZATION: Minimizing impacts and by project modification or rectification to restore or improve impacted habitat to pre-project condition; or through reducing the impacts over time by preservation and maintenance operations during the life of the project or action.

3. COMPENSATION: Compensating for unavoidable impacts by providing replacement or substitute resources (including appropriate management) for losses caused by project construction, operation, or maintenance.

Mitigation should be an integral part of any action or project that adversely affects fish, wildlife, and habitats upon which they depend. Failure to adequately avoid or minimize adverse impacts or to adequately compensate for unavoidable losses of natural resources is a serious deficiency in any project plan and may cause delays in this Department's review and assessment of the adverse impacts upon fish & wildlife resources. In assessing project impacts, reasonable foreseeable secondary and cumulative impacts should be included.

*E. Coordination

Provide copies of pertinent coordination correspondence.

*F. Document Preparers and Their Qualifications

*G. Bibliography

(References: 40 CFR Parts 1500-1508 and various EPA handouts concerning Environmental Assessment documentation.)

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